IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No 156 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE D.P.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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DINESH S THAKKER

Versus

STATE OF GUJARAT

Appearance:

1. Special Criminal Application No. 156 of 2002

MR RAJESH K SHAH for Petitioner No. 1-2

Mr V M Pancholi, APP for Respondent No. 1

NOTICE UNSERVED for Respondent No. 2

CORAM : MR.JUSTICE D.P.BUCH

Date of decision: 05/04/2002

ORAL JUDGEMENT

The present petition under Article 226 of the Constitution of India has been filed by the petitioners above named challenging the FIR being C.R. No.101/2002

registered with Songadh Prohibition Police Station at Songadh in Surat District for offence punishable under sections 70 and 81 of the Bombay Prohibition Act, 1949 on 31.1.2002 against the present petitioners.

2. The aforesaid FIR was lodged by the Prohibition Task Force at Surat stating that the petitioners herein were found carrying rotten jaggery in a tempo bearing No.GJ-15-U-5864 worth Rs.4,95,625/- and committed the aforesaid offence. The petitioner has challenged the aforesaid FIR on various grounds. The court had issued notice at the first instance and rule was issued thereafter. In response to the service of notice of rule, Mr V M Pancholi, learned APP has appeared before the Court. I have heard the learned Advocates for the parties and have perused the papers. The facts are not in dispute. At the same time, it is a fact that rotten jagerry was a complicated issue and the Social Welfare Department of the State of Gujarat had issued certain directions for the said purpose. First one is a circular dated 11.7.1995. Another one was issued by the Director General of Police and Inspector General of Police dated 20.1.1995. Another such circular was issued by the said Office dated 17.11.2000. In this connection, even a writ petition was filed and disposed of by this court on 28.11.1986 in Special Criminal Applications No.4 and 5 of 1986. Another Criminal Misc.Applications No.774 and 775 of 1985 were also disposed of by this court by oral order dated 1.7.1985. One more Criminal Misc.Application No.4763/98 was disposed of by this Court on 27.11.1998. Other such matters were also disposed of by this Court. Last decision appears to be of 10.7.2001 in Criminal Misc.Application No.2170/2001 with other allied criminal Misc.Applications disposed of by this Court. In view of the aforesaid circulars and decisions of this Court, it is very clear that before going for a FIR or a complaint and before such complaint or FIR could be investigated, it was necessary to consider the aforesaid circulars and decisions of this court. This appears to have been omitted in the present matter. At the same time, except the bare statement of the accused that the rotten jaggery seized from the petitioners were to be used or consumed in Gujarat State, no other material has been collected by the respondents in order to show that the rotten jaggery seized in the present case was actually required to be used or consumed in the State of Gujarat.

3. Now the said statement of the petitioners cannot be used against the petitioners as these are the statements of the accused persons against whom the FIR had already been filed. If those statements are omitted

from consideration, then, there is no further material on record to prove the allegations against the petitioners. In that view of the matter, I am of the opinion that the FIR filed as aforesaid does not constitute any offence and, therefore, it is required to be quashed.

4. for the foregoing reasons, this petition is allowed. The FIR being CR No.101/2002 registered at Songadh Prohibition Police Station at Songadh in Surat District for the offences punishable under Bombay Prohibition Act, 1949 against the petitioners is ordered to be quashed and set aside. Rule is made absolute accordingly.

5.4.2002 [D P Buch, J.]
msp